

# Rye City Planning Commission Minutes

October 8, 2002

**PRESENT:**

Peter Larr, Vice-Chairman  
Franklin Chu  
Hugh Greechan  
Martha Monserrate  
Barbara Cummings

**ABSENT:**

Michael W. Klemens, Chairman

**ALSO PRESENT:**

Christian K. Miller, AICP, City Planner  
George Mottarella, City Engineer  
Nicholas Hodnett, CC/AC Chairman

Vice-Chairman Larr called the regular meeting to order in the Council Hearing Room of the City Hall and noted that a quorum was present to conduct official business.

**I. HEARINGS**

**1. 6 Walden Lane Subdivision**

Vice-Chairman Larr read the public notice.

Mr. Anthony Spencer (applicant) provided an overview of the application, noting that the project involved the subdivision of an approximately 1.0135-acre parcel into two Zoning Code compliant building lots. Mr. Spencer noted that the property has frontage and existing curb-cuts on both Brevoort Lane and Walden Lane. He noted that the topography of the site was level.

Mr. Spencer noted some of the plan revisions to address the comments of the Commission including changes in the lot configuration to increase the extent of Lot B's frontage and the inclusion of a deed restriction on a portion of Parcel A prohibiting any driveway or any other structure. Mr. Spencer provided an overview of tree preservation plan, which was prepared by an arborist. Mr. Spencer concluded by noting that the house plans had been revised in response to the comments of the Board of Architectural Review to lower the first floor elevation and modify the grading.

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1 Mr. Marvin Reese of 5 Walden Lane, a 25-year resident, stated that the proposed  
2 development result in the loss of open space and adversely impact the unique character of  
3 Greenhaven. He also noted concern with the increase weekly traffic caused by the new  
4 residence. Mr. Reese requested that the Commission to impose a 1-year moratorium on  
5 new development in the City to address the overbuilding in the community.

6  
7 Mr. Richard Blumberg questioned when survey of property was taken and if any other  
8 surveys were done to anyone's knowledge. Mr. Blumberg suggested that the survey be  
9 verified to determine whether the property was indeed 1.035 acres. Mr. Spencer  
10 responded that the survey was completed on July 31, 2002 and that it was the same  
11 surveyor used as the basis for the contract of sale.

12  
13 Ms. Chris Molinari of 24 Greenhaven Road, a resident of 8 years, was concerned about the  
14 impact the development would have on her quality of live and the extent of overbuilding of  
15 the community. She suggested that Mr. Spencer's motivation was only for profit and that  
16 he would destroy an historic house and creates a hazardous situation for children living in  
17 the area during construction. She also noted concern with the fact that 50% of the existing  
18 trees will be removed, as well as the historic residence on the property. She stated that the  
19 new homes will be overlooking her existing house and was concerned with the loss of  
20 privacy. She also asked if neighborhood privacy was questioned by the Commission and  
21 questioned the Commission's environmental ethics.

22  
23 Mr. Andrew Lovisello, a 22-year resident of the property adjacent to Lot A was also  
24 concerned with loss of privacy and whether this was ever a concern in approving or  
25 denying applications. He noted that he has made recent improvements to his residence  
26 and worked aggressively to preserve his privacy by installing fencing and landscaping on  
27 the perimeter of his property. He also stated that Greenhaven was a unique semi-rural  
28 area in Rye, with many lots exceeding one acre. He was concerned that Greenhaven was  
29 going to be prayed upon by builders wanting to build McMansions. He requested that the  
30 Commission deny the application.

31  
32 The Commission responded that it is concerned with privacy, but that it is bound by laws,  
33 which they swore to uphold when they took office. It was noted that those laws were  
34 passed as part of a democratic and open process and they must abide by them.

35  
36 Mr. Robert Powers, residing at 15 Greenhaven Road and a 36-year resident questioned  
37 why he had never received notice of the hearing. He also asked the Council to recalculate  
38 1.035 acreage and noted that many of the lots in Greenhaven have just slightly less than  
39 one acre. He noted that another recent application in the neighborhood that required a  
40 variance was rejected by the Zoning Board of Appeals and that the Commission should do  
41 the same. He also stated it was likely that the former owner of 6 Walden Lane, encroached  
42 on Mr. Lovisello's property slightly when he build the tennis court, which could impact the

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1 survey and lot size. He requested that the Greenhaven residents be granted permission to  
2 conduct their own survey of the property, at their expense.

3  
4 Mr. Spencer responded that the survey was accurate and that the property area was  
5 similar to that shown on the City's tax assessment property card. The City Planner noted  
6 that Mr. Powers name did not appear on the applicant's notification list, but that he could  
7 not confirm whether Mr. Powers' property was within the 500-foot notification area until the  
8 following day.

9  
10 It was discussed whether or not Mr. Powers' residence was within 500 feet of 6 Walden  
11 Lane.

12  
13 Mr. Rick Marshall, a retired developer and resident noted that he was also representing  
14 Joan and Alfonso Kimche. Mr. Marshall noted concerned with the change of character and  
15 manner of development of the construction. He also raised engineering, drainage and  
16 screening concerns with the application. He discussed the history of the Greenhaven  
17 Woods subdivision, which occurred more than 70 years ago and allowed for more dense  
18 zoning. That subdivision, Mr. Marshall suggested, also provided for the character  
19 protection of Greenhaven by providing winding roads, interconnecting streets and the  
20 preservation of large trees. He also stated that Mr. Spencer never had a meeting with the  
21 residents to discuss his plans and consider their concerns. He questioned the morality of  
22 the Commission for considering the application and requested that the Commission deny  
23 it.

24  
25 Mrs. Marilyn Hoffman, a 22-year resident, residing on Rye Road near the property. Ms.  
26 Hoffman noted that she was a real estate agent and was concerned about the removal of  
27 the existing home. She noted that according to the multiple listing service (MLS) the  
28 property is being marketed to preserve the existing residence, but it appears that the  
29 applicant wishes to remove the structure. She requested that the discrepancy be clarified.  
30 She was also concerned about whether the new houses would be in character with the  
31 neighborhood.

32  
33 Mr. Spencer noted that it was his intension to remove the house due to the cost, risk and  
34 lack of insurance that could be obtained during the moving process. He conceded,  
35 however, that if there were a buyer who wished to pay to preserve and relocate the house,  
36 that he would be willing to do so.

37  
38 Mr. Steven Waldman, 28 Greenhaven Road, noted that he had two small children and is  
39 concerned about their safety due to increased traffic and construction activities related to  
40 the proposed development.

41  
42 Ms. Mary Beth Weiner, a resident of Breevort Road, was concerned about the noise due to  
43 construction activities. She noted that during a previous renovation done in the area she

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1 had to endure the cutting of stone blocks for a year and that she was not able to use her  
2 patio or sit outdoors because of noise and dust. She also stated that if the property were  
3 allowed to be subdivided it would adversely impact the character of the neighborhood.  
4 She noted that she pays high taxes to live in Greenhaven and that her objections should be  
5 heard.

6  
7 Christine Daviron, residing at 92 Greenhaven Road, stated that she felt that there was not  
8 sufficient notice posted on the property. Notice was only posted on Walden Lane and not  
9 on Breevort, where property also faces. She also expressed concern about the children  
10 that walk to the bus stop in the Greenhaven area. She noted that they walk along Breevort  
11 Lane and that the increased construction traffic caused by the new development would  
12 hazardous.

13  
14 Mr. Spencer stated that he was a licensed architect and that the existing house had been  
15 renovated several times since original construction in 1928. He indicated that given the  
16 extent of the modifications any historic significance has been lost. He also stated that he  
17 would not be able to get insurance on the house to move it, but would consider moving it  
18 anyway if someone desired to purchase it.

19  
20 The Commission requested that the applicant discussed the proposed tree removal. Tony  
21 Agacella (applicant's arborist) provided an overview of the tree preservation plan. He  
22 noted that the tree survey identified all trees that are 8 inches in caliper or greater in  
23 diameter. He noted that approximately 22 trees on site that met that criteria. Of those 22  
24 trees, 10 will be removed, 4 of which are diseased, 2 are to be removed in order to allow  
25 adjacent trees to grow, 2 impact overhead utilities and 2 require removal as a result of site  
26 construction.

27  
28 Dana Cavellia, a Mamaroneck resident, noted that she grew up in the house on the  
29 property and was involved in its sale roughly three years ago after her father passed away.  
30 She stated that had she known that the residence could be removed that she would have  
31 placed a restriction to prevent any subdivision. She noted her emotional attachment to the  
32 residence and fondness for the tennis court on the property, which her family agreed not to  
33 use before 9:00 AM on weekends. She discussed the significant changes in the  
34 neighborhood over the last forty years including the construction of the Walden Lane  
35 subdivision. She noted that the Greenhaven was a unique area and that the character of  
36 the neighborhood would be impacted by the proposed construction.

37  
38 The Commission noted that it would keep the hearing open due to the concerns raised by  
39 the residents and the possibility of an improper notification. The City Planner noted that he  
40 would confirm the notification and that if there was a deficiency that he would require the re-  
41 notice of the hearing on the application for the Commission's next meeting on October 22,  
42 2002. The Commission also requested that an additional notification sign be placed on  
43 Brevoort Lane.

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### 2. Tanney

Vice-Chairman Larr read the public notice.

Steve Marchasini (applicant's architect) provided an overview of the application, noting that it involved the construction of five multi-family units on a property located at 43-45 New Street. He noted that the application is substantially consistent with the preliminary site plan approved by the Commission in February.

John Wood, a resident who lives across the street from the property provided a history of the New Street neighborhood. He also expressed the following:

- He questioned whether the builder could conduct more blasting to lower the elevation of the units and reduce their overall height.
- He noted concern regarding the steepness of the driveway and its impact on stormwater runoff onto New Street and his property.
- He noted concern with the addition of a new curb on New Street and the potential loss of on-street parking. He noted that New Street is extremely narrow and that the addition of the curb may prevent cars from pulling off the street to park and still provide for traffic flow.
- He questioned the proposed stormwater detention system and noted that the recent drainage improvements installed by Rye Country Day School at the end of New Street do not appear to be working properly.
- He questioned whether the plan could be further revised to prevent headlight glare from vehicles exiting the site access drive.

On a motion made by Franklin Chu, seconded by Barbara Cummings and carried by the following vote:

AYES: Peter Larr, Franklin Chu, Barbara Cummings, Hugh Greechan, Martha Monserrate

NAYS: None

RECUSED: None

ABSENT: Michael Klemens

the Planning Commission took the following action:

**ACTION:** The Commission closed the public hearing on final site plan application number SP258.

### II. ITEMS PENDING ACTION

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### **1. 6 Walden Lane Subdivision**

The Commission noted that suggestions of a moratorium raised in the public hearing could not be addressed by the Planning Commission. Only the City Council could impose a moratorium. The Commission noted that the City Council is currently reviewing possible changes in the Zoning Code to address concerns regarding the scale of house construction in the City.

The Commission discussed the size of the property and ways to confirm the accuracy of the applicant's survey. The City Engineer (who is also a New York State Licensed Land Surveyor) noted that the deed of the property is available in the City Tax Assessor's Office and that the metes and bounds on that deed could be reviewed to confirm the lot area. The Commission requested that the City Engineer review the deed.

The Commission discussed construction related disturbances. The Commission noted that it would consider imposing construction start and stop times to address neighbor concerns. Other measures to limit construction impacts would also be considered.

The Commission reviewed the tree preservation plan and questioned the applicant as to whether he would be willing to provide replacement trees for those he is proposing to remove. Mr. Spencer replied that he would provide such trees if requested depending on their size and location.

The Commission noted the concerns raised in the public hearing regarding the impact the subdivision could have on the character of the neighborhood. The Commission noted that this concern alone was likely not a sustainable basis for denial of the application in light of the fact that the application complied with the requirements of the Zoning Code.

The Commission reviewed the stormwater drainage plan. The applicant noted that the total amount of impervious area on the property will be reduce after construction due to the elimination of the existing tennis court and some of the driveway.

The Commission reviewed the application's consistency with the City's LWRP policies. The Commission noted that the project was not located within close proximity of the waterfront and that the application was consistent with the applicable policies.

The Commission requested that the deed restriction be revised to include a metes and bounds description of the easement area.

The Commission concluded its discussion by requesting that the applicant consider potential plan modification or mitigation measure to address the comments raised.

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### 2. Tanney

The Commission discussed the stormwater drainage plan. The City Engineer discussed the recent improvements on New Street provided by Rye Country Day School and noted that the system proposed by the applicant should be adequate. The Commission requested that the trench drain at the site access be replaced with catch basins, which tend to function better with less maintenance.

The Commission noted that the proposed curb on New Street be replaced with a mountable curb to allow vehicles to pull off the street to park. The Commission noted the travel and roadway width restrictions of the area.

With respect to headlight glare impact on adjacent properties, the Commission noted that it required the applicant to install a fence along the front property line to address that concern. Relocating the site access to further avoid that impact was discussed as part of the Commission's consideration of alternative site plans prior to its approval of the preliminary site plan. Relocating the access driveway was determined to be inappropriate due to grading concerns.

On a motion made by Barbara Cummings, seconded by Martha Monserrate and carried by the following vote:

AYES: Peter Larr, Franklin Chu, Barbara Cummings, Hugh Greechan, Martha Monserrate

NAYS: None

RECUSED: None

ABSENT: Michael Klemens

The Planning Commission took the following action:

**ACTION:** The Commission adopted a resolution conditionally approving final site plan application number SP#258.

### 3. Beechwind Properties, LLC

The Commission reviewed the draft memorandum prepared by the City Planner summarizing the comments and recommendations made by the Commission regarding the application at its September 24, 2002 meeting.

The Commission debated whether the application should be considered consistent with the LWRP given the concerns regarding the project's lack of public access to the waterfront and the impact the size, height and scale of the proposed building could have on

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1 the character of the historically significant Milltown area. Some members noted that the  
2 application is not eliminating public waterfront access since the property is currently  
3 restricted to private use. It was also noted that public access is also available nearby at  
4 the City Boat Basin.

5  
6 Other members suggested that the one of the objectives of the LWRP is to increase the  
7 public's access to the waterfront and that the Commission should strive to incorporate such  
8 access as part of the project's overall design. It was noted that an access easement to  
9 and along the waterfront on the applicant's property could be the start of a long term  
10 planning program to increase public access in the area. Similar access considerations  
11 could be incorporated as part of the redevelopment of other properties in the area such as  
12 the adjacent Shungot property.

13  
14 Mr. Pirro responded that requiring such access would be considered an unconstitutional  
15 taking of property. The City Planner noted that the applicant's alleged takings claim might  
16 be considered differently in light of the fact that the applicant is seeking a use variance to  
17 construct a use not currently permitted by the Zoning Code.

18  
19 Rex Gedney (applicant's architect) and Mr. Pirro presented a cross section of the property  
20 showing revisions to the originally presented site plan. The revised plan showed that  
21 eliminating parking below the structure reduced the overall height of the proposed building.  
22 The revised plan also complied with the City's Floodplain Management requirements. The  
23 Commission discussed alternative site plan configurations with the applicant to improve  
24 the design of the project and potentially increase views of the waterfront from Milton Road.  
25 The City Planner advised the Commission not to focus too much on site plan  
26 considerations at this stage, since substantial plan revisions could be possible after (and  
27 if) the use variance is granted by the Zoning Board of Appeals. The City Planner noted that  
28 the Commission should focus on the issue of whether the proposed use, not site plan, is  
29 consistent with the policies of the LWRP.

30  
31 The Commission concluded its discussion by agreeing that it would reconsider the draft  
32 memorandum at its next meeting.

### 33 34 **4. 14 Ann Lane Subdivision**

35  
36 The Commission discussed the proposed extension of Ann Lane and why the developer  
37 did not to obtain access from the abutting Davis Avenue. Linda Whitehead (applicant's  
38 attorney) responded that based on the 50-foot frontage configuration, it appeared that the  
39 extension of Ann Lane was always intended and that it would result in the logical  
40 progression of the neighborhood development pattern. Charles Utschig added that Davis  
41 Avenue is not in suitable condition as compared to Ann Lane and would result in an  
42 awkward access configuration.



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1 Mr. Utschig explained the requested waivers from the City's roadway standards including  
2 the relief from the maximum length of a cul-de-sac and the horizontal roadway geometry  
3 (i.e. reverse curve) requirements. He noted that the requested wavier would not present  
4 any hazardous conditions given the prevailing speeds of the residential street.

5  
6 The Commission discussed the proposed removal of the exiting cul-de-sac bulb on Ann  
7 Lane and the implications for abutting property owners. The City Planner explained that  
8 removing the pavement would not automatically allow the property to revert to abutting  
9 owners. That would only occur after that portion of the right-of-way was demapped by the  
10 City Council. Depending on the input of the abutting neighbors the Planning Commission  
11 might support such a demapping.

12  
13 The Commission inquired as to whether the applicant considered keeping the existing  
14 carriage house on the property. Ms. Whitehead noted that the carriage house is in very  
15 poor condition and has been the subject of some prior condemnation efforts by the City  
16 Building Department.

17  
18 The Commission discussed the proposed drainage plan and noted the installation of a  
19 drainage system the entire length of Ann Lane. The Commission questioned whether the  
20 existing stormwater system in Forrest Avenue had adequate capacity to handle the  
21 additional stormwater runoff. The City Engineer responded that most of Ann Lane currently  
22 drains to Forrest Avenue and that the system could handle the projected increase. He also  
23 noted that the proposed system would be a significant capital improvement for the City.

24  
25 The Commission requested that the applicant consider extending a pedestrian easement  
26 from the end of Ann Lane to Midland School for the benefit of neighborhood children. Ms.  
27 Whitehead noted that the applicant was receptive to the idea, but that steps would likely be  
28 required and that a City right-of-way, rather than an easement on private property may be  
29 necessary.

30  
31 The Commission discussed the proposed impacts to the existing slope on the rear of the  
32 property. The Commission noted concern with the extent of disturbance and the height of  
33 the proposed retaining walls. The Commission requested that the plan be revised to  
34 further avoid steep slope disturbance and relocate the proposed drywells from the  
35 proposed retaining walls.

### 36 37 **5. 109 Maple Avenue Corporation**

38  
39 The Commission reviewed the revised site plan and each of the use criteria under Section  
40 197-10 of the Zoning Code. The Commission noted the applications' consistency with the  
41 criteria.

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On a motion made by Martha Monserrate seconded by Franklin Chu and carried by the following vote:

AYES: Peter Larr, Franklin Chu, Barbara Cummings, Hugh Greechan, Martha Monserrate

NAYS: None

RECUSED: None

ABSENT: Michael Klemens

the Planning Commission took the following action:

**ACTION:** The Commission adopted a resolution conditional approving site plan and use permitted subject to additional standards and requirements application number SP#264 and final subdivision application number SUB#276.

### 6. 81 Maple Service Building

The Commission reviewed the revised site plan. The City Planner explained that open space was designated on the plan as required by the Zoning Code for the existing multi-family residence and that additional landscaping was provided on the side property line. The application was also reviewed pursuant and each of the use criteria under Section 197-10 of the Zoning Code. The Commission noted the applications' consistency with the criteria.

On a motion made by Franklin Chu seconded by Hugh Greechan and carried by the following vote:

AYES: Peter Larr, Franklin Chu, Barbara Cummings, Hugh Greechan, Martha Monserrate

NAYS: None

RECUSED: None

ABSENT: Michael Klemens

the Planning Commission took the following action:

**ACTION:** The Commission adopted a resolution conditional approving site plan and use permitted subject to additional standards and requirements application number SP#263.

### 7. 2 School Street

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1 Linda Whitehead (applicant's attorney) noted that the proposed use involved a  
2 professional office with four employees. She noted that the owner was Mr. Peter Sellon  
3 and that the existing perimeter hedgerow would be maintained.  
4

5 The Commission discussed the angle and location of the proposed site access drive and  
6 questioned its relationship to the existing "DO NOT ENTER SIGN" signs. The commission  
7 also requested additional topographic information in Smith Street. The applicant noted  
8 that it would revise its application and provide the additional requested information.  
9

10 On a motion made by Barbara Cummings seconded by Martha Monserrate and carried by  
11 the following vote:  
12

13 AYES: Peter Larr, Franklin Chu, Barbara Cummings, Hugh Greechan, Martha  
14 Monserrate

15 NAYS: None

16 RECUSED: None

17 ABSENT: Michael Klemens  
18

19 the Planning Commission took the following action:  
20

21 **ACTION:** The Commission set public hearing on modified final site plan application  
22 number SP#228A for its next meeting on October 22, 2002.  
23

24  
25 There being no further business the Commission unanimously adopted a motion to adjourn  
26 the meeting at approximately 11:45 p.m.  
27

28 Christian K. Miller, AICP  
29 City Planner